

In the Matter of)
)
Implementation of the DTV Delay Act) MB Docket No. 09-17
)
To: Secretary, FCC

JOINT COMMENTS
OF WISCONSIN PUBLIC TELEVISION

**STATE OF WISCONSIN – EDUCATIONAL
COMMUNICATIONS BOARD**

**BOARD OF REGENTS OF THE UNIVERSITY
OF WISCONSIN SYSTEM**

Margaret L. Miller
Mario J. Weber

Its Counsel

DOW LOHNES PLLC
1200 New Hampshire Avenue, N.W., Suite 800
Washington, D.C. 20036
(202) 776-2000

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Summary

The State of Wisconsin – Educational Communications Board and the Board of Regents of the University of Wisconsin System (collectively, the Wisconsin Public Television network or “WPT”), by their attorneys, hereby submit these comments in response to the Commission’s *Notice of Proposed Rulemaking* in the above-captioned proceeding. WPT respectfully submits that television stations should be permitted to terminate analog service in accordance with the Commission’s already-established procedures for early analog termination – and without the additional regulatory burdens proposed in the *Notice of Proposed Rulemaking*.

WPT also requests a waiver of applicable Commission rules and procedures, to the extent necessary, to allow WPT’s stations to terminate analog service on April 5, 2009. Termination of analog service for WPT’s stations on April 5th is necessitated by severe technical and financial challenges and would best serve the public interest by ensuring a planned and coordinated termination of WPT’s statewide analog service.

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To: Secretary, FCC

The State of Wisconsin – Educational Communications Board (“ECB”) and the Board of Regents of the University of Wisconsin System (the “University”) (collectively, the Wisconsin Public Television network or “WPT”), by their attorneys, hereby submit these comments in response to the Commission’s *Notice of Proposed Rulemaking* (“NPRM”) in the above-captioned proceeding.¹ In the *NPRM*, the Commission tentatively concludes that stations may not terminate analog service prior to April 16, 2009 and proposes additional restrictions and requirements for termination of analog service prior to the June 12, 2009 DTV transition date. With due respect, WPT seeks to terminate analog service on April 5th.

WPT respectfully submits that stations should be permitted to terminate analog service prior to June 12, 2009 in accordance with the Commission's already-established procedures for early analog termination – and without the additional regulatory burdens proposed in the *NPRM*. WPT also requests a waiver of applicable Commission rules and procedures, to the extent necessary, to allow the WPT to terminate analog service for its stations on April 5, 2009.² WPT

¹ See *Implementation of the DTV Delay Act*, Second Report and Order and Notice of Proposed Rulemaking, MB Docket No. 09-17, FCC 09-11 (rel. Feb. 20, 2009).

² ECB and the University will attempt to submit notices of early analog termination for the WPT Stations, which include a request for waiver of any applicable Commission rules to permit the stations to terminate analog service on April 5, 2009.

makes this request with great urgency and some degree of regret, as WPT understands the FCC's policy rationale in trying to manage analog terminations. However, as explained in detail below, due to drastic technical and financial pressures, early termination of analog service for WPT's stations would best serve the public interest, the State of Wisconsin and WPT viewers across the state. This is an unusual situation that requires an unusual solution.

I. Introduction

WPT requires regulatory flexibility to complete the transition to digital television in a manner that takes into account the severe technical and financial challenges it faces. These challenges necessitate that WPT terminate analog service on April 5, 2009. Moreover, termination of analog service on April 5th would best serve the public interest by ensuring a planned and coordinated termination of WPT's statewide analog service. Finally, the additional regulatory burdens proposed in the *NPRM* are unnecessary and would only increase the burden on stations working to complete the DTV transition.

II. Background

The Wisconsin Public Television network consists of six noncommercial educational television stations licensed to ECB and the University (collectively, the "WPT Stations"). ECB is the licensee of WPT Stations WHLA-TV, La Crosse, WI (Facility ID No. 18780), WHRM-TV, Wausau, WI (Facility ID No. 73036), WHWC-TV, Menomonie, WI (Facility ID No. 18793), and WPNE(TV), Green Bay, WI (Facility ID No. 18798). The University is the licensee of WPT Station WHA-TV, Madison, WI (Facility ID No. 6096).³

³ Station WLEF-TV, which is also licensed to ECB, terminated analog service on February 2, 2009 pursuant to the Commission's procedures for permanent termination of pre-transition service in the 30 days immediately preceding the DTV transition date. The station had previously been forced to operate at greatly reduced power (50 percent) due to an equipment problem with its power amplifier tube. See FCC File No. BLSTA-20081114ABM.

ECB and the University are state governmental entities in Wisconsin with a mandate to serve the educational needs of Wisconsin residents through the use of television and other communications technologies. The WPT Stations broadcast a fully consolidated program schedule (i.e., all stations simulcast), providing quality public television programming to viewers across the state of Wisconsin. WPT is a long-standing, respected and statewide public broadcaster.

WPT had initially planned to terminate analog service for the WPT Stations on the original DTV transition date of February 17, 2009. However, in order to avoid confusion and minimize disruption to viewers after the DTV transition date was postponed to June 12, 2009, WPT heeded the Commissioners' calls to maintain continued analog service for the WPT Stations beyond February 17th. After the apparent success of the February 17th transition, WPT began to plan its own analog termination and selected April 5th as the best possible date to terminate analog service for the WPT Stations. This date was selected based on variety of factors, including technical, fiscal, programming, and audience service issues.

WPT was quite taken aback when the *NPRM* stymied its well-considered plan for analog termination. If WPT had known and understood that, after allowing maximum flexibility for stations to terminate analog service on or before February 17th, the FCC would abruptly change course and restrict further planned analog terminations, WPT would have terminated analog service for the WPT Stations on February 17th. WPT now asks the FCC to allow WPT to terminate analog service for the WPT Stations on April 5th in order to avoid severe hardship to WPT and ensure a planned and coordinated transition to digital television.

III. Regulatory Flexibility to Terminate Analog Service Early is Necessary for Stations to Complete the Transition to Digital Television

The ability for WPT to terminate analog service on April 5, 2009 – prior to the DTV transition date and without additional regulatory burdens and restrictions – is necessary in order for the WPT Stations to complete the transition to digital television. In the case of WPT, termination of analog service for the WPT Stations on April 5, 2009 is necessary to address severe technical and financial challenges related to the DTV transition.

In the *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television* (the “*Third DTV Periodic*”), the Commission adopted rules to facilitate the introduction of DTV service.⁴ In doing so, the Commission recognized that the DTV transition is a “complex undertaking presenting many challenges to the broadcast industry and that some disruption of television service may be unavoidable leading up to the analog turn-off.”⁵ Accordingly the Commission adopted rules intended to provide “regulatory flexibility” to broadcasters, including procedures for the termination of analog service prior to the DTV transition date.⁶ Indeed, many public television stations (approximately 40% of all licensed full-service public TV stations) have already – and quite successfully – terminated analog service pursuant to these procedures.⁷

In enacting the DTV Delay Act, Congress expressly recognized that the “flexible” procedures for early analog service termination established in the *Third DTV Periodic* are still

⁴ See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, MB Docket No. 07-91, FCC 07-228 (rel. Dec. 31, 2007).

⁵ See *id.* at ¶ 2.

⁶ *Id.* at ¶¶ 107-134.

necessary to allow stations to complete the DTV transition – notwithstanding the postponement of the DTV transition date until June 12, 2009.⁸ In fact, Congress specifically enshrined the procedures established in the *Third DTV Periodic* for early analog termination in the DTV Delay Act.⁹ Therefore, restricting the ability of stations to terminate analog service prior to the DTV transition date in compliance with the *Third DTV Periodic* would be contrary to the goal of both Congress and the Commission – to provide stations with the regulatory flexibility required to complete the transition to digital television.

A. Catastrophic Analog Equipment Failure

For WPT, early analog termination is required in order to avoid unplanned and potentially catastrophic technical failures of the analog equipment for the WPT Stations. The analog equipment for the WPT Stations has been in operation since the early-to-mid 1990's, with the past several years' maintenance planning and tube budgeting based on a February 17, 2009 analog termination date. Consequently, for years, these facilities have been holding on by a mere thread – and with creative and diligent maintenance by WPT engineers – in anticipation of the DTV transition. WPT thus has a very real concern that, absent early termination of analog service, one or more of the WPT Stations may suffer a catastrophic, complete and total failure of analog service.

In recent weeks, two of the WPT Stations have already come close to that catastrophe – Stations WHWC-TV and WPNE(TV) have been forced to operate at greatly reduced power

⁷ Among the public television stations that have terminated analog service early are the following state and regional networks: Alabama, Hawaii, Kansas, Maine, Nebraska, most of North Dakota, portions of Oklahoma, and South Carolina.

⁸ See DTV Delay Act at § 4(a).

⁹ See *id.*

(50%) due to severe technical problems with their analog equipment (i.e., tube failures and tube amplifier failures). In November 2008, analog Station WLEF-TV was also forced to operate at 50 percent power (due to a tube failure) until its early DTV transition on February 2, 2009. Forcing the WPT Stations to continue analog operations at this time – when it is clear that the WPT Stations’ equipment is in imminent risk of catastrophic failure – risks damage to property and personnel. These analog Stations thus need to be decommissioned as soon as possible.

Moreover, the continued analog operation of WPT network Station WHLA-TV has resulted in mutual interference between the station and commercial broadcast Station WFXS-DT, Wittenberg, WI (Facility ID No. 86204). As a good broadcast “neighbor,” WHLA-TV has consented to receive interference from WFXS-DT, which experienced extraordinary, exigent circumstances that forced it to terminate analog operations early. See FCC File No. BSTA-20090929AMY. However, early analog termination of WHLA-TV would further benefit both stations by resolving the mutual interference.

Thus, all told, out of the six WPT network stations, three have already experienced severe analog equipment failures and one is experiencing substantial interference due to the early DTV transition of a neighboring commercial station. WPT engineering staff has forecast that failure is imminent for the remaining tube at WHWC-TV and for tubes at WHAT-TV, WHRM-TV and WHLA-TV. Therefore, WPT’s analog transmitters are in a precarious state, with WHWC-TV and WPNE(TV) especially vulnerable to imminent failure. See attached Engineering Statements.

Consequently, an early – planned – termination of analog service for the WPT Stations is necessary to ensure a controlled and coordinated transition to digital television, with appropriate advance notice to viewers. Indeed, it would greatly disserve the public interest if any of the WPT Stations were to experience an unplanned catastrophic failure in the coming weeks or

months without an opportunity for viewers to plan ahead and prepare themselves. Consistent with the procedures set forth in the *Third DTV Periodic* and the flexibility mandated by Congress, the Commission should permit WPT the leeway to adopt the most appropriate manner to transition the WPT Stations to digital television – by terminating analog service on April 5th.

B. Financial Pressures

Important financial considerations also dictate early termination of analog service for the WPT Stations. The current economic situation has forced the state of Wisconsin to undertake several rounds of budget cuts that have severely impacted the financial ability of WPT – a partnership of two state governmental entities funded with taxpayer dollars – to continue analog service for the WPT Stations.

On January 28, 2009, Wisconsin Governor Jim Doyle announced a two-year budget proposal to address the state's \$5.7 billion deficit. The budget reduces state tax support for the University, which may force its institutions to cut up to \$174 million over the next two years. For this fiscal year, the state has required ECB to cut over \$225,000 from its General Program Revenue ("GPR") budget. Next year, ECB will have to implement additional budget cuts, including a 1 percent across the board cut (approximately \$145,000) and a 5 percent reduction in its GPR funding (approximately \$282,000). Overall, state budget cuts will reduce ECB's GPR operations budget by over \$683,000 – approximately 15 percent of ECB's GPR operations budget. ECB has already absorbed almost \$2 million in GPR cuts since 2001, resulting in the reduction of its full-time staff from 94 to 62 since 2000.

Early termination of analog service for the WPT Stations would help ECB avoid even more severe financial hardship and conserve valuable public resources. In anticipation of terminating analog service for the WPT Stations on February 17, 2009, ECB had planned to put

projected utility savings (approximately \$100,000) towards the state's budget cuts. ECB had also reallocated station personnel and building space to reduce its operating expenses, effective February 17th. The postponement of the DTV transition date and the worsening economic climate have now exacerbated the financial pressures faced by ECB. The additional budget cuts at the state level have also made it critical for ECB to reduce its utility costs and other operating expenses as soon as possible.

Looking at its own budget and further state budget cuts, WPT is struggling to make hard decisions on how to implement further cuts. Thus, as part of its overall plan, WPT has determined that the best decision for all stakeholders – state taxpayers, WPT, and WPT viewers – is to terminate analog service for the WPT Stations on April 5th.

Termination of analog service on April 5th would also reduce the burden on local electricity utilities. The WPT Stations are one of the largest consumers of electricity in their respective areas and their local utilities had previously projected a reduction in demand after February 17th. Early termination of analog service for the WPT Stations would thus help local electricity utilities avoid having to resort to contingency plans for unanticipated energy demands.

IV. The Public Interest is Best Served by Allowing Stations to Terminate Analog Service Early in Accordance with the Commission's Established Procedures

Allowing stations to terminate analog service early in accordance with the procedures established in the *Third DTV Periodic* best serves the public interest. The procedures set forth in the *Third DTV Periodic* provide the proper balance between the need to provide stations with the regulatory flexibility necessary to complete the DTV transition and the need to ensure that viewer expectations are protected.

The *Third DTV Periodic* established streamlined procedures for stations to permanently terminate their analog service prior to the DTV transition date if necessary to achieve their transition to digital operation.¹⁰ At the same time, however, the *Third DTV Periodic* also required that stations terminating analog service early must provide viewer notifications regarding the early analog service termination for a period of 30 days.¹¹ This combination of regulatory flexibility and viewer protection best serves the public interest.

In the case of WPT, termination of analog service for the WPT Stations on April 5th would best serve the public interest. Early termination of analog service for the WPT Stations would not result in a loss of television service to viewers because the WPT Stations are already operating their post-transition digital facilities, which replicate their respective analog service areas.

Moreover, WPT has already provided extensive consumer education and assistance to viewers regarding the DTV transition. WPT's audience services department has already handled over 3800 calls since September 2008. In fact, WPT's toll-free 800 number has been broadcast by virtually all television stations across the state of Wisconsin as a source of information regarding the DTV transition and WPT's audience services staff has answered calls from viewers throughout Wisconsin and neighboring states. WPT also employed additional staff members to handle overflow calls in the months prior to the anticipated February 17th DTV transition date.

In addition, WPT has aired 21 different DTV spots since the beginning of the DTV transition, 11 of which have been produced by WPT. WPT network station WHRM-TV is also

¹⁰ *Id* at ¶ 133.

¹¹ *Id* at ¶ 134.

currently carrying news programming for a commercial station that terminated analog service on February 17th.

WPT has supplemented its phone bank and on-air education efforts by providing DTV transition information on its website, including streaming videos such as a half-hour program titled “WPT Guide to Digital Television” and an 81-minute presentation about the DTV transition by the WTP Digital Innovations Unit. In addition, WPT has included information about the DTV transition in its viewer program guide and other communications to members.

WPT has also conducted a significant amount of community outreach across the state of Wisconsin. The efforts of WPT in this regard have included the distribution of almost 200,000 print materials, 76 visits to community centers, and targeted outreach to Spanish-speaking viewers through information in Hispanic grocery stores and advertising in Spanish media. WPT has also hired a Hmong-language speaker to respond to calls relating to the DTV transition from Hmong-speaking viewers.

In response to the Commission’s call of concern about stations transitioning on February 17th, WPT brought in special extended staffing on the night of February 17th to handle calls from viewers of other stations across the state. WPT also operated a statewide DTV transition hotline for three days after February 17th, during which it handled almost 2,000 calls on behalf of all Wisconsin television stations – including almost 20 commercial television stations that terminated analog service early on that date. After fielding analog termination calls statewide for some 20 of its commercial TV brethren during the critical week of February 17th – including entire markets such as La Crosse-Eau Claire DMA – WPT is certainly equipped to handle early DTV transition calls on and after April 5th from its five (5) WPT network stations that are still transmitting in analog.

Most recently, as of February 24, 2009, WPT has aired DTV spots at least four times per day to notify viewers of the planned termination of analog service for the WPT Stations. These viewer notifications will run for at least 30 days prior to the planned termination and are in full compliance with the requirements for viewer notifications set forth in the *Third DTV Periodic*. WPT will also continue to provide supplemental DTV transition information to analog viewers until April 5th.

Thus, the FCC can rest assured that WPT is appropriately set up to handle the early analog termination of the WPT Stations on April 5th. Indeed, WPT has already demonstrated its ability to handle consumer issues associated with a much larger analog shutdown – that which occurred on February 17th when 20 commercial television stations across the state of Wisconsin ceased analog service.

V. The Proposed Changes to the Commission’s Established Procedures for Early Analog Termination Are Unnecessary

It is neither necessary nor appropriate to change the Commission’s established procedures for early termination of analog service. The DTV Delay Act, which postponed the DTV transition date from February 17, 2009 to June 12, 2009, allows stations to continue to terminate analog service prior to the DTV transition date in accordance with the procedures established in the *Third DTV Periodic*.¹² Section 4(a) of the DTV Delay Act states:

Nothing in this Act is intended to prevent a licensee of a television broadcast station from terminating the broadcasting of such stations’ analog television signal ... prior to the [DTV transition date] so long as such prior termination is conducted in accordance with the Federal Communication’s Commission’s requirements in effect on the date of enactment of this Act, including the flexible procedures established in the [*Third DTV Periodic*] (emphasis added).

¹² See DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009).

Furthermore, as the Commission has previously recognized, the procedures set forth in the *Third DTV Periodic* are already “consistent with the express language in the DTV Delay Act and will protect viewer expectations.”¹³ Consequently, the restrictions and additional requirements for early analog termination proposed in the *NPRM* are, at best, unnecessary to implement the postponement of the DTV transition date. At worst, the additional regulatory burdens proposed in the *NPRM* are directly contrary to the intent of Congress to preserve the ability of stations to terminate analog service prior to the DTV transition date in accordance with the procedures established in the *Third DTV Periodic*.

VI. The Proposed Changes to the Commission’s Established Procedures for Early Analog Termination Would Only Increase the Burdens on Stations

The changes to the Commission’s procedures for early analog termination proposed in the *NPRM* would impose additional – and substantial – burdens on stations as they work to complete the Congressionally-mandated transition to digital television. At the same time, however, they would do little if anything to increase the protection of viewer expectations.

Specifically, the *NPRM* has proposed the following additional restrictions on early analog termination of service:

1. Stations will not be permitted to terminate analog service prior to April 16, 2009;¹⁴
2. Stations will not be permitted to change their date for analog service termination without a strong justification and express Commission approval;¹⁵

¹³ See *FCC Announces Procedures Regarding Termination of Analog Service On or After February 17, 2009*, Public Notice, FCC 09-06 at (Feb. 5, 2009).

¹⁴ See *NPRM* at ¶ 48.

¹⁵ See *id* at ¶ 49.

3. Stations will not be permitted to rely on Section 73.1615 to terminate analog service in the 30 days prior to the DTV transition date;¹⁶
4. Stations will not be permitted to air viewer notifications for fewer than 30 days under *any* circumstances;¹⁷
5. Stations will not be permitted to terminate analog service early if the Commission believes such termination is not in the public interest;¹⁸

The *NPRM* has also proposed the following additional requirements on stations seeking to terminate analog service prior to the DTV transition date:

1. Requiring a longer on-air viewer notification period up to 60 days;¹⁹
2. Requiring viewer notifications to commence uniformly on a date certain or, instead, as soon as the station's intended termination date is finalized;²⁰
3. Requiring stations to air a crawl for the seven days prior to their termination of analog service;²¹
4. Requiring stations to provide sufficient information to show that early analog termination is necessary and in the public interest;²²
5. Requiring stations to certify that there will be continuing analog service to a substantial portion of their analog audience until June 12th;²³
6. Requiring stations to certify that that they will comply with certain public interest conditions;²⁴
7. Requiring stations to select a final transition date that will enable other interested parties to make their plans and preparations for the station's transition;²⁵

¹⁶ *See id.*

¹⁷ *See id.* at ¶ 50.

¹⁸ *See id.* at ¶ 56.

¹⁹ *See id.* at ¶ 50.

²⁰ *See id.*

²¹ *See id.*

²² *See id.* at ¶ 51.

²³ *See id.*

²⁴ *See id.*

8. Requiring stations to closely coordinate with other stations serving the same viewing area if they intend to terminate analog service before June 12th;²⁶
9. Requiring stations to continue broadcasting an analog signal until 11:59:59 pm local time;²⁷
10. Requiring stations to inform the Commission of the time of day they plan to terminate analog service;²⁸ and
11. Requiring stations to notify viewers if they are planning to end analog service before 11:59:59 pm.²⁹

Finally, the *NPRM* has also proposed additional consumer education requirements, including the following:

1. Requiring stations to air an up-to-date 30 minute information program before they cease analog programming;³⁰ and
2. Requiring stations to provide specific notice to analog viewers who are likely to lose over-the-air service from the station due to changes in the station's coverage area.³¹

These additional restrictions and requirements for early termination of analog service and consumer education would only increase the already substantial burdens (regulatory, financial and otherwise) on stations as they work to complete the transition to digital television. Unfortunately, however, they would do little to nothing to increase the protection of viewer expectations. As the Commission has previously acknowledged, the procedures for early analog termination established in the *Third Periodic Review* are already adequate to protect viewer

²⁵ See *id* at ¶ 57.

²⁶ See *id* at ¶ 57.

²⁷ See *id* at ¶ 58.

²⁸ See *id*.

²⁹ See *id*.

³⁰ See *id* at ¶ 61.

³¹ See *id* at ¶ 63-64.

expectations – even after the postponement of the DTV transition date. For these reasons, WPT respectfully submits that the changes proposed in the *NPRM* should not be adopted.

VII. Conclusion

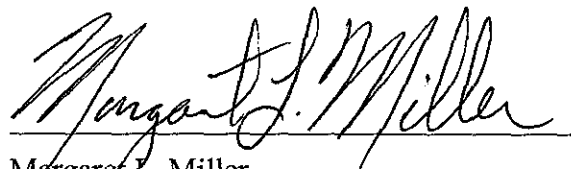
For all these reasons, WPT respectfully requests that it be permitted to terminate analog service for the WPT Stations on April 5, 2009. WPT also asks the FCC to refrain from imposing further regulatory burdens on stations – especially public television stations – that are already severely burdened by technical and financial challenges related to the DTV transition. Many other public television stations, including entire statewide public television networks, have already wisely and competently managed the termination of analog service for their stations prior to the DTV transition date. WPT simply seeks to do the same – on the date that makes the most sense for all of its many stakeholders, including its valued and supportive viewers.

Respectfully Submitted,

STATE OF WISCONSIN – EDUCATIONAL
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By:



Margaret L. Miller
Mario J. Weber

Its Counsel

DOW LOHNES PLLC

1200 New Hampshire Avenue, N.W., Suite 800
Washington, D.C. 20036
(202) 776-2000

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